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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,111	08/31/2001	Gary R. Klein	10010453-1	2097

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EXAMINER	
DUNCAN, MARC M	

ART UNIT	PAPER NUMBER
2113	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/945,111	KLEIN ET AL.	
	Examiner	Art Unit	
	Marc M Duncan	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *6,7,17 and 18* is/are allowed.

6)☒ Claim(s) *1-5,8-16 and 19-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 August 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

FINAL REJECTION

Status of the Claims

Claims 20-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 20-25 are rejected under 35 U.S.C. 101 because the claimed invention is the disclosed invention is inoperative and therefore lacks utility.

Claims 1, 5, 8-13, 15-16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Buzsaki.

Claims 2-4, 14 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzsaki in view of Winokur et al.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 20-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A medium comprising a software object is not statutory subject matter under 35 USC 101. The instant claim language does not define any structural or functional interrelationship between a computer program and other claimed components of the computer. See MPEP 2106.

Claims 20-25 are rejected under 35 U.S.C. 101 because the claimed invention is the disclosed invention is inoperative and therefore lacks utility. A medium comprising a software object represents no relationship that gives structure or function to the software object and does not allow the object's functionality to be realized.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 8-13, 15-16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Buzsaki.

Regarding claim 1:

Buzsaki teaches executing a program on a processor-based device that presents a user interface for defining a management policy in Fig. 7 and col. 4 lines 1-6.

Buzsaki teaches receiving input from a user identifying management action to be performed by said management policy in col. 2 lines 55-57, col. 4 lines 1-6 and col. 4 lines 27-28.

Buzsaki teaches receiving input from a user specifying a modifiable process flow for said management policy to utilize in performing said management action in col. 4 lines 1-6.

Regarding claim 5:

Buzsaki teaches wherein said management policy is represented by a software object stored to a data storage device communicatively accessible by said management

system in Fig. 4, col. 5 lines 28-29 and col. 5 lines 50-54. The policy is stored as a software object in the database.

Regarding claim 8:

Buzsaki teaches wherein said defining said management policy includes creating a new management policy in col. 4 lines 3-6.

Regarding claim 9:

Buzsaki teaches wherein said defining said management policy includes modifying an existing management policy in col. 4 lines 3-6.

Regarding claim 10:

Buzsaki teaches receiving input from a user for arranging at least one action to be performed for said management action in a process list to specify said process flow in Fig. 5, col. 4 lines 1-6 and col. 6 lines 28-30. The table of process activities is a process list that corresponds to the process transition logic table that specifies the process flow.

Regarding claim 11:

Buzsaki teaches storing said management action to a software object defining said management policy in Fig. 4-5 and col. 6 lines 8-24.

Regarding claim 12:

Buzsaki teaches storing said management action to a process list attribute of said software object, wherein said process list attribute identifies said process flow for said management policy in Fig. 5 and col. 6 lines 25-43.

Regarding claim 13:

Buzsaki teaches a software program stored to a data storage device, said software program executable to present a user interface for defining a management policy for controlling behavior of a management system in col. 4 lines 1-6.

Buzsaki teaches at least one processor-based device operable to execute said software program in Fig. 7.

Buzsaki teaches at least one input device communicatively coupled to said at least one processor-based device to allow input from a user to said software program to identify a management action to be performed by said management policy and to specify a modifiable process flow for said management policy to utilize in performing said management action in Fig. 7, col. 2 lines 55-57, col. 4 lines 1-6 and col. 4 lines 27-28.

Regarding claim 15:

Buzsaki teaches wherein said data storage device comprises at least one selected from the group consisting of random access memory (RAM), disk drive, floppy disk, Compact Disc (CD), Digital Versatile Disc (DVD), any other type of optical storage medium and any combination thereof in col. 7 lines 33-35.

Regarding claim 16:

Buzsaki teaches wherein said management policy is represented by a software object stored to a data storage device communicatively accessible by said management system in Fig. 4, col. 5 lines 28-29 and col. 5 lines 50-54. The policy is stored as a software object in the database.

Regarding claim 19:

Buzsaki teaches wherein said software program is operable to receive input from a user comprising input for arranging at least one action to be performed for said management action in an order that specifies said process flow in Fig. 5, col. 4 lines 1-6 and col. 6 lines 28-30.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-4, 14 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzsaki in view of Winokur et al.

Regarding claim 2:

The teachings of Buzsaki are outlined above.

Buzsaki does not explicitly teach the managed system being a network element of a communication network. Buzsaki does, however, teach the managed system being a computer system.

Winokur explicitly teaches the managed system being a network element of a communication network in Fig. 2.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the network teaching of Winokur with the computer system of Buzsaki.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Buzsaki teaches a computer system. Winokur teaches that computer devices are connected in a network so that resources can be shared and data can be transferred among devices in col. 3 lines 23-26.

Regarding claim 3:

Buzsaki teaches wherein said management policy is invoked for performing said management action responsive to detection of a fault condition for at least one system managed by said management system in col. 3 lines 34-39.

Buzsaki does not explicitly teach the managed system being a network element of a communication network. Buzsaki does, however, teach the managed system being a computer system.

Winokur explicitly teaches the managed system being a network element of a communication network in Fig. 2.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the network teaching of Winokur with the computer system of Buzsaki.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Buzsaki teaches a computer system. Winokur teaches that computer devices are connected in a network so that resources can be shared and data can be transferred among devices in col. 3 lines 23-26.

Regarding claim 4:

Buzsaki teaches wherein said management policy identifies said fault condition and said at least one network element for which said management action is to be invoked in Fig. 5-6 and col. 6 lines 8-65.

Regarding claim 14:

Buzsaki teaches at least one processor-based device operable to execute said management policy to control behavior of said management system in managing at least one computer system in col. 3 lines 34-39 and col. 5 lines 40-42.

Buzsaki does not explicitly teach the managed system being a network element of a communication network. Buzsaki does, however, teach the managed system being a computer system.

Winokur explicitly teaches the managed system being a network element of a communication network in Fig. 2.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the network teaching of Winokur with the computer system of Buzsaki.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Buzsaki teaches a computer system. Winokur

teaches that computer devices are connected in a network so that resources can be shared and data can be transferred among devices in col. 3 lines 23-26.

Regarding claim 20:

Buzsaki teaches a software object defining a management policy having attributes that control behavior of a management system in managing a computer system in Fig. 4, col. 5 lines 28-29 and col. 5 lines 50-54.

Buzsaki teaches a process list attribute having a plurality of management actions included therein, wherein management actions are arranged in a user defined manner that dictates a modifiable process flow for said management policy to utilize in performing said management actions upon invocation of said management policy in Fig. 5 and col. 6 lines 44-65.

Buzsaki does not explicitly teach the managed system being a network element of a communication network. Buzsaki does, however, teach the managed system being a computer system.

Winokur explicitly teaches the managed system being a network element of a communication network in Fig. 2.

It would have been obvious to one of ordinary skill in the art at the time of invention to combine the network teaching of Winokur with the computer system of Buzsaki.

One of ordinary skill in the art at the time of invention would have been motivated to combine the teachings because Buzsaki teaches a computer system. Winokur

teaches that computer devices are connected in a network so that resources can be shared and data can be transferred among devices in col. 3 lines 23-26.

Regarding claim 21:

Buzsaki teaches at least one attribute that identifies a circumstance for which said management policy is to be invoked in col. 6 lines 8-24. In the example, "undeliverable e-mail" is a circumstance for which the management policy is to be invoked.

Regarding claim 22:

Buzsaki teaches wherein said circumstance includes identification of a particular type of fault condition for at least one network element in col. 6 lines 8-24. In the example, "undeliverable e-mail" is a circumstance for which the management policy is to be invoked.

Regarding claim 23:

Buzsaki teaches a name attribute specifying a user defined name for said management policy, wherein said name attribute is not said at least one attribute that identifies said circumstance for which said management policy is to be invoked in Fig. 5 item "160."

Response to Arguments

Applicant's arguments filed 8/24/04 have been fully considered but they are not persuasive.

In response to applicant's arguments regarding claims 1, 13 and 20, the examiner respectfully disagrees. Applicant states that it appears that Buzsaki has a

fixed process flow. The examiner respectfully disagrees with that assessment. When read in light of the specification, the modifiable process flow of the instant claim includes situations where certain steps, or actions, are removed from the process flow, thereby resulting in a modified process flow. An example is the situation provided by applicant when only a logging function is desired in processing an error. Buzsaki contemplates modifying a process flow in such a way. In Buzsaki, a policy or process is executed using a process definition. The process definition contents the activities that are to be run when executing a particular policy or process as well as the transition to be made between the activities. Buzsaki further teaches that the user can eliminate or add activities as the user sees fit. It can be seen, therefore, that by eliminating activities the process definition would be altered to no longer include not only the activities but also the transitions to said eliminated activities. Without a transition or activity present in the process definition, the process engine will not attempt to execute the activity that has been eliminated and will not even check to see if the activity is available. The modifiable process flow of the instant claim reads on this situation described in Buzsaki when read in light of the teachings in the specification of eliminating specific actions as part of modifying the process flow. The rejection is maintained.

Applicant further argues, with respect to claim 20, that a medium comprising a software object represents statutory subject matter. The examiner respectfully disagrees. Simply claiming a medium does not define statutory subject matter. A medium that is not computer readable does nothing to impart structure or function to a software object. A medium could be anything on which software code could be written.

Claim language such as that in the instant claim reads on a piece of paper on which software code has been written.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc M Duncan whose telephone number is 571-272-3646. The examiner can normally be reached on M-T and TH-F 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md

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